UNIVERSITY EXAMINATIONS

October/November 2021

CIV3701

Civil Procedure

100 Marks
Duration 6 Hours *(in Arial 11pt)*

First examiner: **Ms MP Mothapo; Ms M Mkhabela**
Second examiner: **Adv MB Ndlazi**

This paper consists of 7 pages.

INSTRUCTIONS FOR A PORTFOLIO OR TAKE-HOME EXAM ON MYEXAMS

PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY BEFORE ANSWERING THE EXAMINATION QUESTIONS.

1. The examination question paper counts **100 marks.**

2. It consists of 6 questions. Answer **ALL** of the questions.

3. The duration of the examination is **06 hours**. Your answers must be submitted via the myExams platform on **21 October 2021** on or before **20h00** (South African Standard Time).

4. This a **closed-book examination**. While the examination is in progress, you are not allowed to consult another person or any source in order to assist you to answer any of the questions contained in this question paper. While the examination is in progress, you may not assist another student in answering any of the questions contained in this question paper.
5. This examination is proctored via the Invigilator App.

6. **SUBMISSION OF YOUR EXAMINATION ANSWER FILE**

Your answer to this take-home examination must be submitted online on the myExams platform.

6.1 Access myExams at https://myexams.ac.za/portal and login using your student number and myUnisa password.

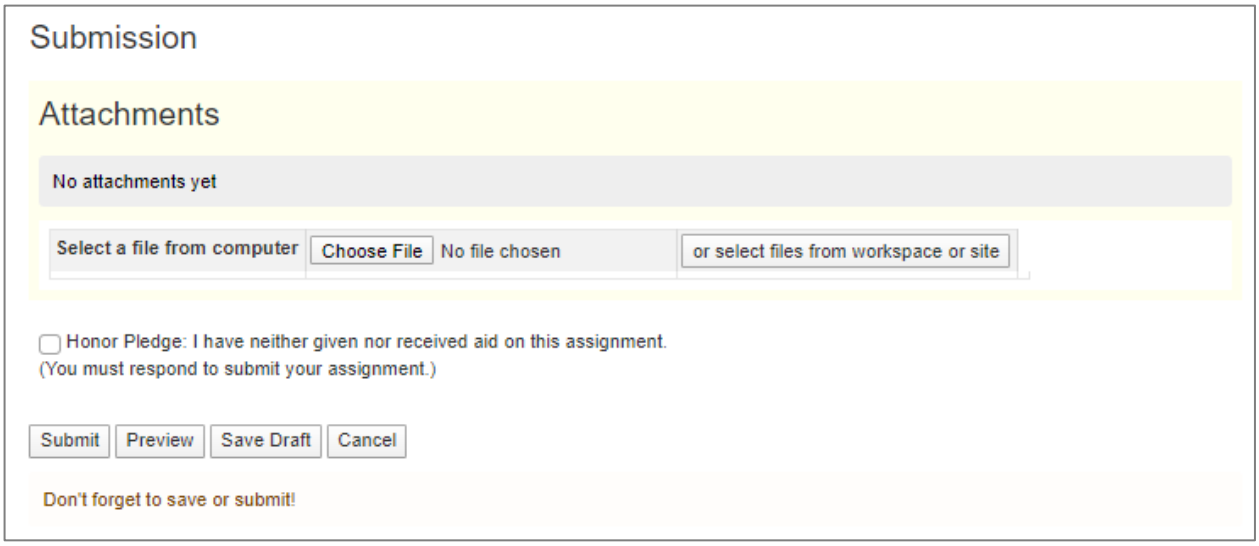
6.2 Go to your specific examination site through the site tabs on the horizontal navigation bar. Also check your **Sites** link in the top right-hand corner if you do not find the site on the horizontal navigation bar.

6.3 Once the site has loaded, select the **eAssessment** tool from the left-navigation menu.

6.4 The list of all available assessments in the site will be displayed.

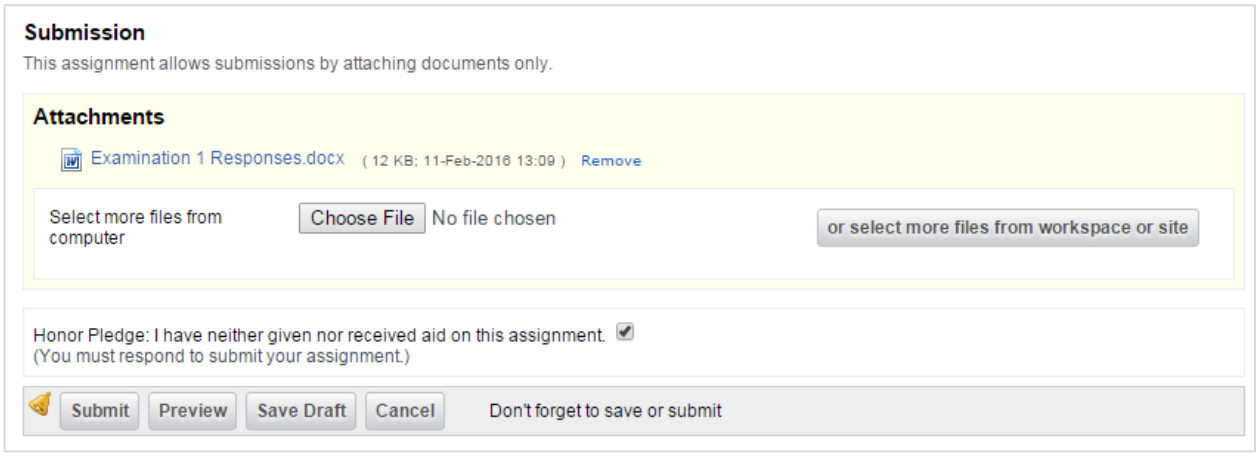
6.5 Select the assessment for which you want to upload the examination answer file by **clicking on the title of the assessment** in the list. A new page will open.

6.6 Submit your examination answer file.



You are allowed to attach **ONE** PDF file.

Under **Attachments**, click the **Choose File** button to browse for a file on your device.


Submission
This assignment allows submissions by attaching documents only.
Attachments
Examination 1 Responses.docx
(12 KB; 11-Feb-2016 13:09)
Remove
Select more files from computer
Choose File
No file chosen
or select more files from workspace or site
Honor Pledge: I have neither given nor received aid on this assignment.
(You must respond to submit your assignment.)
Submit
Preview
Save Draft
Cancel
Don't forget to save or submit

Once you have attached your answer file, the name of the file, as well as the file size and upload time stamp will be displayed under **Attachments**.

Tip: You may click **Remove** to remove the attachment if you selected the wrong file.

Tip: Select the **honour pledge**. Students MUST check the honour pledge before submission if it appears on the screen. A student will not be able to submit the assessment if he/she did not check the honour pledge.

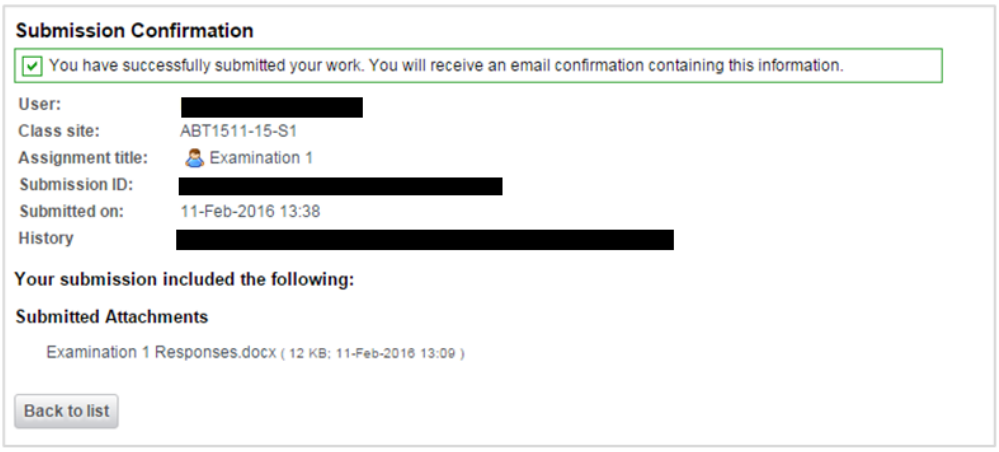
When you are ready and satisfied that you have correct answer file, click the **Submit** button to complete your assessment submission.

Tip: If you are not yet ready to submit, you may click **Preview** to preview the submission, or **Save Draft** to save your submission and submit it later. Click **Cancel** to exit the assessment without saving or submitting.

You are advised to preview your submission to ensure that it is legible and that the correct answer file has been uploaded.

Time permitting, you will be allowed to resubmit your exam file twice.

6.7 Submission confirmation


Submission Confirmation
You have successfully submitted your work. You will receive an email confirmation containing this information.
User:
Class site: ABT1511-15-S1
Assignment title: Examination 1
Submission ID:
Submitted on: 11-Feb-2016 13:38
History
Your submission included the following:
Submitted Attachments
Examination 1 Responses.docx (12 KB; 11-Feb-2016 13:09)
Back to list

Once you have submitted your assessment, you will receive a confirmation message on the screen. **Make a screen copy for your records**. In addition, if you have opted to receive email notifications, you will also receive an email confirmation of your submission.

7. The cover page to your take-home exam must include your name, student number and the module code.

8. It is preferred that your take-home exam is typed. However, handwritten submissions will also be accepted.

9. Whether your answers are typed or handwritten, your submission on the myExams platform must be made in the form of **one PDF** document.

9.1 The exam answer file that you submit must not be password protected or uploaded as a “read only” file.

9.2 Your examination answer file will not be marked if:

9.2.1 you send your examination answer file via email.
9.2.2 you submit the incorrect examination answer file.
9.2.3 you submit your exam answer file on an unofficial examination platform (including the invigilator cellphone application).
9.2.4 you submit your examination answer file in the incorrect file format.
9.2.5 you submit a password-protected document.
9.2.6 you submit your examination answer file late.

9.3 The mark awarded for an incomplete examination answer file submission will be your final mark. You will not be allowed to resubmit after the scheduled closing date and time of the exam.

9.4 The mark awarded for an illegible examination answer file submission will be your final mark. You will not be allowed to resubmit after the scheduled closing date and time of the exam.

10. If your answers are typed, ensure that the following requirements are adhered to. Items 9.3-9.6 applies to written assignments as well.

10.1 The text must be typed in Arial font, size 12 with single line spacing within the paragraph, and double line spacing after the paragraph.

10.2 The text must be justified.

10.3 All of the pages must be numbered in the right hand corner at the bottom of the page.

10.4 All margins must be 2.5cm, but the left margin must be 3cm.

10.5 South African English and not American English should be used. For example, the correct spelling is “Labour” and not “Labor”.

10.6 Do not use abbreviations or SMS language.

10.7 All quotes that are two lines long (or less), must form part of the main text, be written in italics, and be bracketed by quotation marks. Where a quotation is longer than two lines, it must be typed in a separate paragraph in italics in size 11 font and must be indented by 1 cm. No quotation marks are required when the quotations stand alone. Use quotations very sparingly. In this take-home exam, a maximum of 5% of the text may be quoted.

11. When answering the take-home exam questions, remember that an open-book exam is a test at a higher level than the usual type of exam, where memory is tested as much as insight. In an open-book exam, you need not memorise any information. You are expected to prove that you can use information, rather than merely repeat it. In brief, what is being tested is factual knowledge, understanding and the correct application thereof, not memory skills. For this reason, you do not earn marks by merely detailing a list of all the information that you think might be relevant to a particular question. This gives no indication that you know what statutory or other provisions are applicable in a specific context. You are expected to identify precisely what information applies, and then explain why you think so.

11.1 Also, because you have the guide available when answering questions, we do not give marks for direct quotations from the guide. You are therefore assessed on your level of understanding of the legal principles by looking at how well you applied the principles to the questions.

11.2 **PLEASE DO NOT CUT AND PASTE ANSWERS FROM THE STUDY GUIDE (OR ANY OTHER SOURCE).**

12. The arguments that you make must be logical, well-structured and substantiated by all of the relevant legal principles. You are given 04 hours to complete the take-home exam. Use the time given wisely.

12.1 Ensure that you give reasons for each answer. Substantiate your answers by referring to ALL of the relevant authorities, e.g. sections from relevant legislation and/or court cases in the text or in your footnotes.

12.2 You are required to have read and summarised the prescribed cases yourself. The summaries in the Study Guide are not sufficient for this exam. When using case law to support your answer, please include complete references to the relevant cases in your footnotes. This means that you must not only include the name of the case but also the exact page and section and/or paragraph where the information can be found. The same applies to articles and books used.

12.3 A number of students lose marks because they do not approach problem-type questions correctly. When answering such questions, it is important to first clarify for yourself the area of work where the answer must be sought. Once you have done this, set out the relevant legal principles. Deal only with those principles that relate to the given facts. Next, apply these principles to the facts. This is where most of the students lose marks - they set out the law in some detail, but then do not illustrate how it applies to the factual situation they have been asked to solve. Finally, state your conclusion.

13. By ticking the Honour Pledge, you confirm that you have read (i) the University's Policy on Copyright Infringement and Plagiarism and the Student Disciplinary Code, which are both available on myUnisa: www.unisa.ac.za/unisarules, and (ii) the information relating to student values and plagiarism that is found at https://www.unisa.ac.za/sites/myunisa/default/Study-@-Unisa/Student-values-and-rules.

13.1 Students suspected of dishonest conduct during the examination will be subjected to disciplinary processes. UNISA has zero tolerance for plagiarism and/or any other forms of academic dishonesty.

13.2 Students who have not utilised the invigilation or proctoring tools will be subjected to disciplinary processes (this rule is only applicable if your module is on the invigilated module list).

PLEASE NOTE:

If you experience technical problems of any kind on the day(s) of the examination (including network or loadshedding challenges) and your examination answers are not submitted by the cut-off time, please apply online for an aegrotat exam within 3 days of the examination session. Include supporting documentation with your application.

Students experiencing technical challenges may contact the SCSC on 080 000 1870 or email Examenquiries@unisa.ac.za or refer to Get-Help for the list of additional contact numbers.

INTRODUCTORY STUDIES

QUESTION 1

(a) When determining why a magistrate's court has jurisdiction to hear a matter, the question is answered by reference to sections 28, 29 and 46 of the Magistrates' Courts Act, 32 of 1944, and not on the grounds of common law jurisdiction. Explain why this is the case. (6)

(b) Briefly discuss an application to set aside irregular proceedings. (6)

(c) Briefly discuss the concept of 'offer to settle" in terms of the Uniform Rule 34 and rule 18 of the magistrate's court rules. (4)

(d) Explain the meaning of the term "Liquid document" for the purposes of provisional sentence summons (4)

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HIGH COURT JURISDICTION AND PROCEDURE

QUESTION 2

(a) J learns that K, who is a journalist for Sunday Times newspaper, is in possession of J's photos in a very comprising situation and is about to publish them the following day. **Answer** the following questions:

(i) Name the type of application that J must use in order to prevent K from publishing the photographs. (1)

(ii) Name the affidavits that must be exchanged between the parties. (3)

(iii) Name the procedure that J may use if K's affidavit contains inadmissible evidence. (1)

(b) B wishes to obtain a divorce from her husband M. merely state the correct answer to each question that follows. **You must not give reasons for your answers**.

(i) What type of summons must B use to institute the action? (1)

(ii) How will the summons be served on M if he is in Nigeria? (1)

(iii) What document can B sign whereby authorising her attorney to act on her behalf? (1)

(iv) What is the first process that M must file if he wishes to oppose the divorce proceedings? (1)

(v) What pleading must M file in order to raise his defence? (1)

(vi) What procedure should a party use if the name of one the minor children is stated incorrectly in the plea? (1)

(vii) What procedure can B use if M files a plea that contains a scandalous statement about B? (1)

(viii) What pleading can B file if M raises a new averment in his plea? (1)

(ix) What proceedings may B use after pleadings have closed in order to establish what documents M will raise as evidence at trial? (1)

(x) What form of cost order will B request if she is of the opinion that M seriously misconducted himself during the course of proceedings? (1)

[15]

QUESTION 3

(a) S and T attend a conference for law lecturers in Cape Town. While delivering his paper, S shares a joke with the audience about T. The joke is defamatory, and T is not happy about it. The following day, T gets a call from his wife in Johannesburg about the joke which had been published in the newspaper *Sowetan*. Both S and T live in Mamelodi (Pretoria). T confronts S in his hotel room and later stones his car. The damages to the car repair amount to R500 000. S is unhappy about the whole situation and wants to sue for the damages. With these facts in mind, answer the following questions and **give full reasons for your answers:**

(i) Will the Western Cape High Court, Cape Town; Gauteng Division, Pretoria; or Gauteng Local Division, Johannesburg have jurisdiction to hear the matter against Thabo? (6)

(ii) Assume that T is a Nigerian resident and has a holiday home in Durban. Will the Gauteng Division, have jurisdiction in the matter? (4)

(iii) Will your answer to (ii) above change if T consent to the Gauteng Division, Pretoria? Your answer should refer to applicable case law. (5)

(b) X and Y have been married to each other for 2 Years. They both reside in Botswana. Y is sent to Durban for employment. Whilst in Durban for 8 months, Y decides to divorce X. With these facts in mind answer the following questions:

(i) Will the KwaZulu-Natal local Division, Durban have jurisdiction on the matter? (3)

(ii) Does Y have a choice to institute the proceeding in a regional or district magistrates' Court? (2)

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MAGISTRATES' COURTS JURISDICTION AND PROCEDURE

QUESTION 4

(a) Discuss under what circumstances the court will grant a request for amendment of pleadings. (4)

(b) Name the judgments which a court may grant after the plaintiff and the defendant have closed their respective case and presented argument. (3)

(c) List any **three** items that are exempt from execution in terms of section 67 of the Magistrate's Court Act of 1944. (3)

(d) S wishes to sue R in the amount of R120 000 for goods sold and delivered, which R, despite demands, refuses to pay. Answer the following questions.

(i) Briefly discuss the type of summons S may use to commence the action. (2)

(ii) Briefly explain the purpose of a pre-trial conference in the magistrates' courts. (3)

[15]

QUESTION 5

(a) X enters into a contract with Y in Pretoria. In terms of the contract, Y will build a house for X in Soweto. X pays Y R400 000 for the project. Y resides in Krugersdorp. Y fails to finish building the house and refuses to do so. X wants Y to finish building the house. Will any magistrate's court mentioned herein be competent to force X to finish building the house? (5)

(b) B owns property in Durban, which she has rented to A. The monthly rental is R30 000. A is four months in arrears, and B suspects that A plans to leave the property to avoid paying the arrear rentals in the amount of R120 000. Advise B regarding the steps she may take to recover payment of the arrear rental. (5)

(c) N, who lives in Johannesburg, buys a truck for R190 000 from T in Bloemfontein. T lives in Bloemfontein. N pays T R160 000 of the purchase price and undertakes to pay the balance of R30 000 on delivery of the truck. T delivers the truck to N's home, but despite demand, N fails to pay the balance of the purchase price. Will any magistrate's court in all the centres mentioned above have jurisdiction to hear an action instituted by T against N for the return of the truck? Give detailed reasons for your answer. (5)

[15]

APPEAL, REVIEW AND VARIATION OF JUDGMENT

QUESTION 6

(a) If X appeals against the judgment of a single judge, may Y, the plaintiff, execute this judgment given in his favour? (4)

(b) Name the procedure that must be followed when variation of judgment is sought in terms of Rule 42 of the Uniform Rules of Court. (1)

(c) Name the procedure to be followed when variation of judgment in terms of the common law is sought. (1)

(d) During a trial, plaintiff's representative objects to admission of inadmissible evidence. Counsel's objection is overruled by the Magistrate and the Magistrate bases a substantial part of the judgment on the evidence contended to be inadmissible. The plaintiff's claim is dismissed. With these facts in mind answer the following questions.

(i) Should the plaintiff appeal the judgment or take it on review? (1)
(ii) Depending on your answer to (i) above, name the procedure that should be used. (1)
(iii) Name the two distinctions between appeal and review. (2)

(d) Briefly explain why the Constitutional court may be approached directly on appeal from any other court. (1)

(e) Which essential information must be included in a notice of appeal from magistrate court? (2)

(f) What essential information must be included in a notice of appeal from High Court? (2)

[15]

TOTAL: [100]

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